

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 435 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
2. To be referred to the Reporter or not? No. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? : NO
No.

PANKAJKUMAR RAMANLAL JERIVALA

Versus

DEVJIBHAI DUDABHAI PATEL

Appearance:

MR DHIRENDRA MEHTA for Petitioner
MR RC KAKKAD for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/09/2000

ORAL JUDGEMENT

This revision application has been preferred against the order dated 22-2-2000 passed by the Civil Judge (SD), Surat on the application exh. 1 for condonation of delay caused in filing the application for setting aside the exparte decree under O.9 R.13 of the CPC.

2. Exparte decree was passed by the trial Court on 3-9-1998 for possession of the certain plots in dispute and in case possession of those plots has not been handed over to any person then the plaintiff was entitled to recover 14 plots' price, Rs.1, 96,000/- together with 18% p.a. interest from 1-9-1986 till realization of the amount from the defendant himself and from his property. The defendant was also permanently restrained from transferring, selling, mortgaging, gifting or alienating the property to any person as well as from making any construction by the order dated 3-9-1998. It is stated by the respondent that though he had engaged some lawyer on his behalf his advocate advised him that he is not to worry he will inform him when his presence would be required. The notice was issued for execution to the respondent on 17-3-99. Then he came to know about the proceedings and exparte decree. The notice dated 17-3-99 was issued in the execution proceedings then the respondent could be able to know about exparte decree and moved an application for setting aside the exparte decree under O.9 R.13 of the CPC and the application for condonation of delay caused in filing that application. The trial Court has passed the impugned order condoning the delay of six months on the ground that due to some domestic work and economic reason he could not be able to file the application for setting aside the exparte decree.

3. The contention of the learned counsel for the petitioner is that there is nothing on record to show as to which of the causes prevented him from appearing when the suit proceedings were going on and the exparte decree was passed. Only making mention that due to some domestic mistake or economic reason is not sufficient for condonation of delay at all as required under O.9 R.13 of the CPC. When an application for setting aside the exparte decree was moved and if the applicant satisfies the Court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called out for hearing.

4. In the present case, no reason or cause has been shown or any material has been produced by the respondent which has prevented him from appearing in the suit proceedings. The suit was filed in the year 1989 and the same decided and decreed in the year 1998 i.e. after about 9 years and the respondent has taken fruit throughout pendency of the suit till this date. Learned counsel for the petitioner further submitted that the petitioner will suffer irreparable loss. He has further submitted that no doubt the trial Court has discretion to

condone delay but that discretion ought to have been exercised judicially. In this respect, he has relied on the decision of this Court in the case of Municipal Corporation of Ahmedabad Vs. Voltas Ltd., reported in 1994 (2) 1325, wherein it has been held as under :

"The principle in law only is that the Courts are required to take a liberal view while considering the facts constituting the sufficiency of the cause, on the basis of which condonation of delay is sought. This does not necessarily amount to saying that all applications for condonation must be granted. This is necessarily within the discretionary jurisdiction of the Court, and the Court deciding the application for condonation would necessarily exercise its discretion judicially in the light of well established principles, as regards the application of the relevant facts.

5. Learned counsel for the petitioner has also relied on the decision of the Apex Court in the case of P.K. Ramchandran Vs. State of Kerala & Another, reported in 1997 SAR (Civil) Supreme Court, 804, wherein it has been held "Law of limitation may harshly effect a particularly party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was this neither proper nor judicious. The order condoning the delay cannot be sustained."

6. Learned counsel for the respondent submitted that the trial Court has rightly exercised its discretion and the trial Court has considered the reasons of delay i.e. domestic work and economic reasons though the details of reasons have not been mentioned. But it appears from the impugned order itself that the reasons have been considered by the trial Court and it is also considered by the trial Court that if the application for condonation of delay is dismissed the purpose of filing the application for setting aside the exparte decree will not be served and it appears that the Court has adopted liberal view in exercising its discretion in condoning the delay as the trial Court has already exercised its power within its jurisdiction and this Court should not set aside the order in the revisional jurisdiction where the discretion has been exercised by the trial Court within its powers vested with it. The application for condonation of delay has been allowed and the delay caused in filing the application for setting aside the

exparte decree has been condoned subject to payment of costs of Rs.1000/- which has already been deposited in the Court and the application for setting aside the exparte decree under O.9 R. 13 is still pending and that has to be decided by the Court concerned.

7. I have carefully considered the contentions of the learned counsel for the parties with regard to condonation of delay caused in filing the application for setting aside the exparte decree. It is a well settled proposition of law that in condoning the delay the Court should adopt liberal view and if any sufficient reasons appear to the Court for condonation of delay, the delay should be condoned. In the present case, the Court has also observed that in the larger interest of justice the application ought to have been allowed. It appears that liberal view has been taken by the Court in exercising discretion for condoning the delay causing in filing the application for setting aside the exparte decree. That application file under O. 9 R. 13 of the CPC is still pending before the trial Court.

8. The petitioner is at liberty to point out before the trial Court to pass appropriate order if necessary subject to certain conditions regarding deposit of whole decretal amount or in part when the application for setting aside the exparte decree is heard. In the present case, the trial Court has already exercised its powers vested with the trial Court and hence this Court is declined to exercise revisional jurisdiction calling for interference by this Court u/s 115 of the CPC. Accordingly, this Revision Application is dismissed. Rule is discharged, with no order as to costs. Interim relief granted by this Court stands vacated.

9. In the last, the learned counsel for the petitioner submitted that the application under O. 9 R.13 of the CPC is still pending and this Court should direct the trial Court to decide that application under O. 9 R. 13 of the CPC within a stipulated period without being influenced by the order of this Court. Accordingly, the trial Court is directed to decide the application filed under O. 9 R. 13 of the CPC for setting aside the exparte decree in accordance with law after giving a reasonable opportunity of hearing to the parties concerned within a period of two months from the date of presentation of a certified copy of this order by either of the parties. The writ of this Court be sent to the trial Court forthwith. Rule is discharged with no orders as to costs. Interim order passed by this Court stands vacated.

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/JVSatwara/